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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

**OMNIBUS OPPOSITION OF THE
CHAPTER 11 TRUSTEE TO: (I)
NOTICE AND MOTION TO
COMPEL TRUSTEE TO ABANDON
ALLRISE MINING POD AND (II)
APPLICATION OF ALLRISE
FINANCIAL GROUP FOR
ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE
CLAIM**

CHAPTER 11 TRUSTEE'S OMNIBUS OBJECTION TO ABANDONMENT
MOTION AND ADMINISTRATIVE CLAIM

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1 Mark D. Waldron, in his official capacity as the Chapter 11 Trustee (the
2 “**Trustee**”) hereby opposes (the “**Opposition**”) the *Notice and Motion to Compel*
3 *Trustee to Abandon Allrise Mining Pod* [ECF 461], filed on January 24, 2020 (the
4 “**Abandonment Motion**”) and the *Application of Allrise Financial Group for*
5 *Allowance and Payment of Administrative Expense Claim* [ECF 459], filed on
6 January 24, 2020 (the “**Administrative Claim**”). This Opposition is supported by
7 the Declaration of Mark D. Waldron (the “**Waldron Declaration**”), the
8 Declaration of Lauren Mieke (the “**Mieke Declaration**”), the Declaration of Allen
9 Oh (the “**Oh Declaration**”), the Declaration of Ryan Oster (the “**Oster**
10 **Declaration**”), the Declaration of Pamela Egan (the “**Egan Declaration**”) and the
11 Request for Judicial Notice, filed herewith.

12 In support of the Opposition, the Trustee respectfully avers:

13 I. INTRODUCTION

14 Allrise IP Holding, Inc., through its affiliate, Allrise Financial Group
15 (hereinafter, “**Allrise**”) seeks to require the Trustee to abandon one of the
16 Debtor’s pods, pod 1 (referred to hereinafter as the “**Pod**”), located at the crypto-
17 mining facility of Giga Watt, Inc. (the “**Debtor**”) in Moses Lake, Washington (the
18 “**Moses Lake Facility**”). A pod is a building that is outfitted with electrical gear
19 that enables hundreds of computers to run crypto-mining operations. It is built on
20 a concrete slab with permanent improvements. The Debtor leased the ground
21 under the pods.

1 Allrise also asserts the right to an administrative claim for certain miners
2 which it thinks – but is not sure – were delivered to the Debtor pursuant to a
3 prepetition purchase agreement.

4 Allrise lacks standing to pursue either the Abandonment Motion or the
5 Administrative Claim because it failed to register with the state of Washington as
6 a foreign corporation. Under clear Washington law, the Abandonment Motion and
7 the Administrative Claim must be stayed until Allrise registers with the
8 Washington Secretary of State, pays all back due fees and pays all applicable
9 penalties.

10 Aside from the lack of standing, the Abandonment Motion fails as a matter
11 of law because Allrise does not – and cannot – show that the Pod with respect to
12 which it seeks abandonment is burdensome to the estate or of inconsequential
13 value or benefit to the estate. In fact, the Pod is valuable to the estate.

14 The Abandonment Motion appears to be an attempt by Allrise to obtain
15 possession of the Pod, which it claims, falsely, to own. Allrise's asserted interest
16 in the Pod was never recorded. No UCC statement was ever filed. Allrise posted
17 no signs or made any public indication of any interest or even operations in the
18 Pod. Allrise is nowhere mentioned in the Debtor's Schedules or Statement of
19 Financial Affairs. In fact, the Trustee was not even aware of Allrise until February
20 2019. Pursuant to section 544(a), the Trustee's rights as a bona fide purchaser and
21 judicial lien creditor in the Pod defeats Allrise's secret interest.

1 Finally, any interest that Allrise may have had in the Pod was terminated
2 when the Trustee terminated the Sublease due to Allrise's failure to pay rent.

3 The Administrative Claim also fails as a matter of law. Allrise failed to
4 provide notice of the Administrative Claim. Further, Allrise's claim arises from a
5 prepetition purchase agreement with the Debtor – not with the debtor in
6 possession or the Trustee. No consideration was paid to the estate. Further, Allrise
7 does not know if the miners for which it seeks an administrative claim were even
8 delivered to Giga Watt.

9 Allrise's demand that the Trustee search for the allegedly missing miners is
10 patently unreasonable. First, as set forth above, Allrise does not know if the
11 miners were even delivered to Giga Watt. Second, credibility is an issue. Allrise's
12 list of serial numbers is hardly credible. No declaration attests to its validity. No
13 agreement is attached to the Administrative Claim. Allrise has given varying
14 explanations of its relationship with Giga Watt from being introduced through
15 "Vadim" to meeting shareholders "at a party." The one common thread is that Mr.
16 Vladimir Nikolayevich Evseev, Allrise's principal and founder, does not know the
17 details and all employees involved in the transaction are now gone. Third, the
18 Trustee would have to divert extremely limited resources for two to three weeks to
19 search for these miners without any assurance that they even exist.

20 Finally, Allrise's allusions to a reclamation claim pursuant to 11 U.S.C.
21 § 546(c) and a claim pursuant to 11 U.S.C. § 503(b)(9) undermine – not bolster –
22 the Administrative Claim because reclamation and the claim pursuant to 11 U.S.C.

§ 503(b)(9) assume that the miners were sold to the Debtor – not owned by Allrise.

II. BACKGROUND FACTS

On May 1, 2017, Giga Watt, Inc. and the Master Landlord signed a lease for the land on which the Pod is located (the “**Master Lease**”). A copy of the Master Lease is attached hereto as **Exhibit A**. The Master Lease required Giga Watt, Inc. to provide notice of any sublease to MLDC 1, LLC (the “**Master Landlord**”). **Exh. A**, Master Lease, ¶ 10. That same day, May 1, 2017, and without notice to the Master Landlord, Giga Watt entered into a sublease (the “**Sublease**”) with Allrise IP Holding, Inc., which is described in the Sublease as a Delaware Corporation. A copy of the Sublease is attached hereto as **Exhibit B**. *See also* Oster Declaration.

On May 2, 2017, Allrise IP Holding, Inc., described as a Cayman Islands corporation, purportedly entered into a service agreement (the “**Service Agreement**”) with Giga Watt, Inc. The Service Agreement states:

Whereas, Customer [Allrise] wishes to operate its mining farm located in 7906 Randolph Road, Moses Lake, WA 98337 (“Mining Farm”) with assistance from Giga Watt.”

Service Agreement, attached hereto as **Exhibit C** (recitals).

On May 2, 2017, Giga Watt and Allrise Holding IP, Inc., described as a Cayman Islands corporation, purportedly entered into a Development Agreement which provided that Giga Watt would build the Pod. As set forth more fully

1 below, the Development Agreement provided that Allrise's rights to the Pod were
2 subject to the terms of the Sublease, which, as also set forth more fully below,
3 provided that (a) the Sublease could be cancelled upon failure to pay rent within
4 30 days of the due date and (b) upon termination of the Sublease, ownership of the
5 Pod would revert to Giga Watt. *See* Development Agreement attached hereto as
6 **Exhibit D**.

7 On May 1, 2017, Allrise IP Holding, Inc., described again as a Cayman
8 Island corporation, purportedly entered into a Purchase and Sale Agreement with
9 Giga Watt for the purchase of miners. Pursuant to paragraph 5, the miners were to
10 be delivered on or before July 15, 2017. *See* Purchase and Sale Agreement,
11 attached hereto as **Exhibit E**. By as late as October 2017, Allrise did not know
12 which equipment it had purchased and did not even have a copy of the Purchase
13 Agreement. *See* email correspondence, attached hereto as **Exhibit F**, p. 7.¹ That
14 same month, Vladimir Nikolayevich Evseev made plans to visit the Moses Lake
15 Facility. No complaints were made about missing miners. *Id.*

16 The Debtor's Schedules of Assets and Liabilities and its Statement of
17 Financial Affairs omit any mention of Allrise. *See* Waldron Declaration. Allrise
18 never publicly recorded any interest in the Pod. No insignia were placed on the
19 Pod. No indication of any kind was ever made that Allrise was conducting
20

21 _____
22 ¹ Allrise produced these emails to the Trustee at the Trustee's request. *See*
Egan Declaration.

1 business at the Pod or claimed ownership in the Pod. *See* Oster Declaration and
2 Waldron Declaration.

3 In October 2018, the Debtor and the Master Landlord amended the Master
4 Lease to provide that a sublease was allowed, provided that the Master Landlord
5 provided written consent. A copy of the amended Master Lease is attached hereto
6 as **Exhibit G**, ¶ 17. No consent was ever requested or obtained. *See* Oster
7 Declaration.

8 On November 19, 2018 (the “**Petition Date**”), the Debtor commenced this
9 case by filing a voluntary petition for relief pursuant to sections 101, *et seq.* of
10 title 11 of the United States Code (the “**Bankruptcy Code**”).

11 On December 4, 2018, the state of Nevada, Department of Business and
12 Industry, Division of Mortgage Lending issued an *Order to Cease and Desist*,
13 *Order Imposing an Administrative Fine and Investigative Costs and Notice of*
14 *Opportunity for Administrative Hearing* (“**Cease and Desist Order**”) with respect
15 to Allrise Direct Lending LLC, d/b/a Allrise Financial Group, Inc., Royal
16 Development, Inc. and Vladimir Nikolayevich Evseev on the ground that Mr.
17 Evseev and his businesses were conducting a mortgage brokerage business in
18 Nevada without a license. The Cease and Desist Order states that Mr. Evseev
19 represented to the Nevada Division of Mortgage Lending that he was not engaged
20 in mortgage brokerage in Nevada and that he would issue such a disclaimer on his
21 company’s website. Instead, however, he changed the website to boast that his
22 company was now conducting brokering mortgages in all fifty states. *See* Cease

1 and Desist Order attached hereto as **Exhibit H**. *See also* Request for Judicial
2 Notice.

3 In mid-January 2019, the Grant County Public Utility District shut off the
4 electricity at the Moses Lake Facility. At that point in time, Ryan Oster, the
5 principal of MLDC 1, LLC and of Giga Plex LLC, the Debtor's landlords at the
6 Moses Lake Facility, locked all of the pods at the Moses Lake Facility as well as
7 the exterior perimeter fencing for the entire Moses Lake Facility. He stayed on the
8 premises 24 hours, seven days a week in order to ensure security. He also bought
9 and installed power generators so that security cameras would watch the premises
10 at all times. No miners were removed by Ryan Oster and he is not aware of any
11 miners being removed from the facility during that period. *See* Oster Declaration.

12 Allrise admits that it did not pay the rent owed for any part of January 2019
13 pursuant to the Sublease. Email Correspondence attached hereto as **Exhibit I**.

14 On January 23, 2019, the Court approved the appointment of Mark D.
15 Waldron as the Trustee pursuant to its *Order Approving Appointment of Chapter*
16 *11 Trustee* [Docket. No. 146]. Ryan Oster continued to reside at the Moses Lake
17 Facility with security cameras.

18 Pursuant to the *Order Granting Chapter 11 Trustee's Motion for Order*
19 *Approving Agreement With Moses Lake Landlords* [ECF 300], dated May 10,
20 2019, and the *Order Granting Chapter 11 Trustee's Motion for Order Approving*
21 *Moses Lake Three-Way Agreement* [ECF 309], dated May 20, 2019, the Trustee
22 resumed operations at most of the Moses Lake Facility.

1 At that point in time, the Master Landlord gave the keys to the Moses Lake
2 Facility to Lauren Mieke and Allen Oh, whom the Trustee had retained pursuant
3 to Court orders. They kept Pod 1 locked at all times. They never removed any
4 equipment from Pod 1. The Trustee maintains security cameras which allow the
5 Trustee to know who enters and leaves the Moses Lake Facility at all times. There
6 is no evidence of the removal of any equipment from Pod 1, other than as set forth
7 below.

8 On June 7, 2019, Mr. Evseev entered into a *Consent Order Requiring*
9 *Compliance, Imposing an Administrative Fine and Assessing Administrative Costs*
10 (the “**Consent Order**”) with the Nevada Division of Mortgage Lending pursuant
11 to which he promised to pay a \$15,000 fine for having conducted business without
12 a license in Nevada and for making misrepresentations to Nevada regarding that
13 business. A true and correct copy of the Consent Order is attached hereto as
14 **Exhibit J**. *See also* Request for Judicial Notice.

15 On or about July 19, 2019, the Master Landlord voluntarily paid to have the
16 electricity turned on at the remaining closed pods at the Moses Lake Facility, Pod
17 1, which is the Pod at issue here, and Pod 2. Almost immediately, the Trustee
18 began operations from Pod 2. The Pod remained dormant pending resolution of
19 Allrise’s claim. *See* Waldron Declaration.

20 On August 9, 2019, after multiple demands for payment of rent and
21 exhaustive efforts to resolve issues with Allrise, the Trustee sent a letter to Allrise
22

1 formally terminating the sublease. A copy of the foregoing termination letter is
2 attached hereto as **Exhibit K**.

3 On or about August 21, 2019, Allrise tendered one half of the rent for
4 January 2019 and one half of the electricity that Allrise unilaterally decided was
5 appropriate. The total sum was \$17,500. The Trustee accepted the tender without
6 rescinding the termination or otherwise waiving any rights. *See* Waldron
7 Declaration.

8 On November 5, 2019, Allrise admitted that it did not know whether the
9 miners, for which it now seeks an administrative claim, were ever delivered to the
10 Debtor. *See Exhibit A* to Administrative Claim, November 5, 2019 email.

11 On December 11, 2019, at the Trustee's request, Allrise removed its miners
12 from Pod 1 so that the Trustee could begin operating in it. The Trustee's staff
13 supervised the removal to ensure that nothing, but miners and related power cords,
14 were removed from Pod 1. *See* Oh Declaration.

15 Thereafter, in December 2019, the Trustee installed miners and began
16 operations in Pod 1. *See* Waldron Declaration.

17 **III. POINTS AND AUTHORITIES**

18 **A. Allrise Lacks Standing to Pursue Either the Abandonment** 19 **Motion or the Administrative Claim**

20 The Abandonment Motion and the Administrative Claim are brought by
21 Allrise IP Holding, Inc. through its affiliate "Allrise Financial Group." Allrise IP
22 Holding, Inc. is organized under the laws of Delaware and perhaps also the

1 Cayman Islands. Neither Allrise IP Holding, Inc. nor any of its affiliates,
2 including those doing business as “Allrise Financial Group” are registered with
3 the Washington Secretary of State.

4 Under Washington law:

5 (2) A foreign entity doing business in this state may not
6 maintain an action or proceeding in this state unless it is
7 registered to do business in this state and has paid to this
8 state all fees and penalties for the years, or parts thereof,
during which it did business in this state without having
registered.

9 Wash. Rev. Code § 23.95.505.

10 Despite its failure to register, Allrise operated a “mining farm” at the Moses
11 Lake Facility. It is now seeking to recover the building in which it conducted
12 these operations. It is also seeking an administrative claim for certain miners that
13 it claimed it purchased in May 2017, but that it is not sure were ever delivered to
14 the Debtor. Indeed, without disclosing that it is not registered to do business in
15 Washington, Allrise has made a series of vague proposals to the Trustee to resume
16 conducting business at the Moses Lake Facility or even buy the Moses Lake
17 Facility, despite its failure to register as a foreign corporation. *See* Waldron
18 Declaration.

19 Allrise lacks standing to pursue either the Abandonment Motion or the
20 Administrative Claim until it registers and pays all past due fees and applicable
21 penalties. *See Seaside Inland Transp. v. Coastal Carriers LLC*, 2018 WL
22 4409381, at *3 (E.D. Wash. Sept. 17, 2018) (unregistered foreign corporation

1 cannot sue until it pays all past due fees and applicable penalties). The Motion
2 initiated a contested matter which is an action or proceeding within the meaning
3 of Wash. Rev. Code § 23.95.505. *See* Fed.R.Bank.P. 9014. *See also In re*
4 *Khachikyan*, 335 B.R. 121, 125–26 (B.A.P. 9th Cir. 2005) (in a contested matter,
5 “discovery is available, testimony regarding contested material factual disputes
6 must be taken in the same manner as in an adversary proceeding, and the court
7 must make findings of fact and conclusions of law before entering an order that
8 has the status of a judgment.”); *In re Ballard*, 502 B.R. 311, 320 (Bankr. S.D.
9 Ohio 2013) (“There are two different types of litigated proceedings within
10 bankruptcy cases: adversary proceedings and contested matters.”); “Bankruptcy
11 Rules Made Easy (2001): A Guide to the Federal Rules of Civil Procedure That
12 Apply in Bankruptcy,” 75 Am. Bankr. L.J. 35, 41 (2001) (“The operative principle
13 is that [w]henver there is an actual dispute, other than an adversary proceeding,
14 before the bankruptcy court, the litigation to resolve that dispute is a contested
15 matter.”).

16 This case should be distinguished from cases where a claimant who has
17 operated in a different state is forced by the automatic stay to assert a claim where
18 the bankruptcy case is pending. Here, Allrise has initiated a contested matter,
19 which is an action or proceeding, based on business activities conducted in
20 Washington.

21 Allrise’s failure to register should not be treated as a mere oversight, but as
22 a pattern of violating American state law. *See* Cease and Desist Order, **Exh. H**,

1 and Consent Order, **Exh. J** (Mr. Evseev was found to have conducted a mortgage
2 brokerage business in Nevada without a license and to have made
3 misrepresentations to Nevada regarding same).

4 Accordingly, until Allrise registers with the State of Washington and pays
5 all back due fees and any applicable penalties, it cannot pursue the Abandonment
6 Motion or the Administrative Claim and they should be denied.

7 **B. The Abandonment Motion Fails as a Matter of Law**

8 1. Allrise Does Not Make the Showing Required for Abandonment

9 The Abandonment Motion is brought pursuant to 11 U.S.C. § 554. On its
10 face, § 554 permits abandonment only “upon a showing that property is either of
11 inconsequential value and benefit to the estate or burdensome to the estate.” *In re*
12 *Johnston*, 49 F.3d 538, 540 (9th Cir. 1995). Allrise makes no showing that the Pod
13 is of inconsequential value and benefit to the estate or burdensome. Indeed, as set
14 forth in the Waldron Declaration, the Pod benefits the estate by allowing the
15 Trustee to operate more miners for the benefit of the estate.

16 2. The Trustee’s Rights Under Section 544(a) Defeat Allrise’s
17 Asserted but Secret Interest in the Pod

18 Pursuant to 11 U.S.C. § 544(a), the Trustee has the rights of a *bona fide*
19 purchaser and judicial lien creditor. State law determines the scope of the rights.
20 *See In re Loretto Winery Ltd.*, 898 F.2d 715, 718 (9th Cir. 1990) (“Courts look to
21 state law to determine the underlying property interests and commercial
22 arrangements at issue in bankruptcy proceedings.”). The Sublease, the

1 Development Agreement, the Service Agreement and the Purchase Agreement are
2 all governed by Washington law.

3 As stated in *In re Seaway Exp. Corp.*, 912 F.2d 1125 (9th Cir. 1990):

4 To “perfect” an interest in real property under
5 Washington law, a party must record a deed signed by
6 the grantor. Wash. Rev. Code §§ 64.04.010–.020. An
7 unrecorded interest in property is not binding on a
8 subsequent purchaser in good faith. Wash. Rev. Code §
9 65.08.070; *Paganelli v. Swendsen*, 50 Wash.2d 304, 311
10 P.2d 676 (1957). Such recording statutes are central to
11 real property law. *In re Great Plains Western Ranch*
12 *Co.*, 38 B.R. 899, 905 (Bankr. C.D. Cal. 1984).

13 *Id.* at 1127. “The policy underlying this rule is the protection of *bona fide*
14 purchasers against loss from secret liens or conveyances not disclosed by any
15 public record nor ascertainable by due diligence.” *Trapp v. Jackels*, 114 Wash.
16 App. 1040 (2002). Similarly, “[w]hen a creditor claims an inchoate equitable
17 interest in real property owned by the debtor at the commencement of the case,
18 which interest is not evidenced by a recorded instrument and not yet granted by a
19 state court, ***the trustee as bona fide purchaser prevails.***” *Seaway Exp.*, 912 F.2d
20 at 1128–29 (emphasis added).

21 The Debtor’s Schedules and Statement of Financial Affairs omit any
22 mention of Allrise. The Trustee has asked Allrise to produce any record of a
23 public recording of its asserted ownership interest in the Pod. None has been
24 produced. A search of the Grant County public records and a UCC search has
25 found no recording of any purported interest. *See* Waldron Declaration; Egan
Declaration. The Master Landlord never knew of Allrise’s asserted interest in the

1 Pod until Allrise contacted the Trustee after the Petition Date. *See* Oster
2 Declaration. Nothing in or on the Pod would have indicated Allrise's assertion to
3 ownership of or operation in the Pod. *See* Oster Declaration and Waldron
4 Declaration.

5 Accordingly, Allrise's asserted interest is no more than a secret lien that is
6 defeated by the Trustee's status as a *bona fide* purchaser and hypothetical lien
7 creditor.

8 3. Allrise's Failure to Pay Rent Caused the Termination of the
9 Sublease and With it Any Interest in the Pod

10 The Sublease provided that:

11 *If Allrise fails to pay any rent installment within thirty*
12 *(30) days of its due date* or fails to perform any other
13 covenant under this Sublease within thirty (30) days
14 after written notice from Giga Watt stating the nature of
the default, *Giga Watt may cancel this Sublease*, and
reenter and take possession of the parcel 1 using all
necessary force to do so . . .

15 Sublease, **Exh. B**, ¶ 10. The Sublease further provided that "at the termination of
16 this Sublease, Tenant shall revert the Mining Farm to Giga Watt." Sublease, **Exh.**
17 **B**, ¶ 5.b. The Development Agreement states:

18 The ownership of the Mining Farm is subject to the land
19 sublease . . . Client shall be bound by the terms of the
Sublease Agreement.

20 Development Agreement, **Exh. D**, ¶ 4.

21 Allrise has admitted that it failed to pay rent in January 2019, despite
22 operating there until the Grant County PUD turned off the electricity in mid-

1 January 2019. *See* Email, **Exh. I**. On August 9, 2019, the Trustee formally
2 informed Allrise of the termination of the Sublease. *See* Termination Letter, **Exh.**
3 **K**.

4 Accordingly, ownership of the Pod reverted to the estate and Allrise does
5 not own the Pod.

6 **C. The Administrative Claim Fails As a Matter of Law**

7 Allrise is not entitled to an administrative claim for miners for two reasons:
8 (1) it has failed to provide proper notice of the claim and (2) it has failed to meet
9 its burden of proof.

10 1. Allrise Failed to Provide Notice of its Administrative Claim

11 Section § 503 provides in pertinent part, “After notice and a hearing, there
12 shall be allowed administrative expenses. . . .” 11 U.S.C. § 503(b). *See also*
13 L.B.R. 2002-1(a). Here, Allrise has failed to provide notice of the Administrative
14 Claim. Therefore, the Administrative Claim fails.

15 2. Allrise Has Not Met Its Burden of Proof

16 The burden of proving an administrative expense claim is on the claimant.
17 *In re DAK Indus., Inc.*, 66 F.3d 1091(9th Cir. 1995). The claimant must show that
18 the debt asserted to be an administrative expense:

19 (1) arose from a transaction with the debtor-in-
20 possession as opposed to the preceding entity (or,
21 alternatively, that the claimant gave consideration to the
22

debtor-in-possession); and (2) directly and substantially benefitted the estate.

Id. at 1094 (9th Cir. 1995). *See also In re Palau*, 139 B.R. 942, 944 (9th Cir. BAP 1992), *aff'd*, 18 F.3d 746 (9th Cir.1994) (“In order to keep administrative costs to the estate at a minimum, ‘the actual, necessary costs and expenses of preserving the estate,’ § 503(1)(A), are construed narrowly.”).

a) *Allrise’s Claim Arose Pre-Petition*

The Ninth Circuit has adopted the “fair contemplation” test for determining when a claim accrues for the purposes of section 502(b). *In re SNTL Corp.*, 571 F.3d 826, 839 (9th Cir. 2009). “Under that test, a claim arises when a claimant can fairly or reasonably contemplate the claim's existence even if a cause of action has not yet accrued under nonbankruptcy law.” *Id.*

The Purchase Agreement is dated May 1, 2017, a year and a half before the Petition Date. The Purchase Agreement provided that the miners were to be delivered by July 15, 2017. Allrise could have fairly and reasonably contemplated that it had at least a contingent claim against Giga Watt as of July 15, 2017. Furthermore, the consideration allegedly paid by Allrise was paid pre-petition. Thus, Allrise’s claim for undelivered miners arose pre-petition.

Furthermore, it is questionable whether Allrise has any kind of claim with respect to the miners. Correspondence between Allrise and the Debtor fails to show any concern about missing miners during the 18 months that elapsed from the date of purported sale to the Petition Date. *See* Email Correspondence, **Exh. F**; Egan Declaration.

1 *b) Allrise Cannot Establish A Direct and Substantial*
2 *Benefit to the Estate*

3 Allrise does not know whether the miners were ever delivered to Giga Watt.
4 Its attorney admitted, “I have not been able to locate a ‘proof of delivery’ thus far.
5 Delivery may have confirmed verbally.” *See Exh. A* to the Administrative Claim,
6 at p. 7. Allrise’s counsel attempted to avoid the consequence of this admission by
7 proposing that “past invoices and payments for hosting fees . . . indicate that we
8 had all of the miners. . . .” *Id.* However, it is just as likely that Giga Watt
9 overcharged Allrise, which would give rise to a general unsecured claim, but
10 certainly not an administrative claim.

11 Finally, Allrise makes no effort to quantify the benefit allegedly conferred
12 on the estate by a set of miners that might or might not have been delivered to
13 Giga Watt.

14 **D. Allrise’s Demand that the Trustee Search for the Allegedly**
15 **Missing Miners Is Patently Unreasonable**

16 Allrise has produced a list of serial numbers whose authenticity is utterly
17 unfounded. It is not attached to the Purchase Agreement. No declaration attests to
18 its veracity.

19 There is reason to distrust the authenticity of the serial number list. As set
20 forth above, Allrise misrepresented to Nevada that it was not conducting mortgage
21 brokerage in Nevada. It failed to register as a foreign corporation in Washington.
22

1 And the Trustee has never received a satisfactory answer about Giga Watt's
2 relationship with Allrise. In October 2019, Allrise stated that Allrise was
3 introduced to Giga Watt through "Vadim," who apparently worked at Allrise. *See*
4 **Exhibit L**, Email. Later, Allrise stated that Mr. Evseev met "Andrey and Leonid"
5 (perhaps a reference to Andrey Kuzenny and Leonid Markin, shareholders who
6 have vanished) "at a party." Allrise also claims that everyone involved in the
7 negotiations is no longer with Allrise, except for Vladimir Nikolayevich Evseev
8 who was not closely involved in the negotiations. *See* Email Dated October 9,
9 2019, **Exhibit M**.

10 Further, the Trustee is operating approximately 7,000 to 8,000 miners in
11 closely packed quarters. Checking the serial number on each miner would require
12 pulling two workers away from all other duties and have them spend a full two to
13 three weeks manually unplugging, checking and replugging miners, handling
14 sharp and old wires that cut the hands. *See* Mieke Declaration.

15 **E. Reclamation Is Inapposite**

16 Allrise claims that its proof of claim constitutes *prima facie* evidence of a
17 reclamation claim pursuant to 11 U.S.C. § 546(c)(1), 11 U.S.C. § 503(b)(9) and a
18 general unsecured claim. First, the proof of claim is not *prima facie* evidence of
19 anything because it fails to attach the relevant agreements under which the claims
20 arise. *See* Federal Rule of Bankruptcy Procedure 3001(f) (if a claim "is based on a
21 writing, a copy of the writing shall be attached to the proof of claim"). The proof
22 of claim is based on the Purchase Agreement, the Service Agreement, the

1 Development Agreement and the Sublease. None of them are attached to the Proof
2 of Claim. Therefore, it is not *prima facie* valid.

3 Second, the proof of claim nowhere mentions reclamation or 11 U.S.C. §
4 503(b)(9). If it did, that would directly contradict Allrise's claim that it owns
5 allegedly missing miners because reclamation and the safe harbor section
6 503(b)(9) only apply when a party has *sold goods* to a debtor. *See* 11 U.S.C.
7 § 546(c) (referring to the rights of "a seller of goods that has sold goods to the
8 debtor"); 11 U.S.C. § 503(b)(9) (referring to the rights of one who has sold goods
9 to the debtor). Indeed, if Allrise had sold miners to the Debtor, then it would have
10 no claim, given the lack of any evidence of a timely reclamation demand or that
11 the miners were delivered within twenty days of the Petition Date. *See* 11 U.S.C.
12 § 546(c)(1) (requiring that the seller provide notice within 45 days of delivery or
13 not later than 20 days after the Petition Date if the 45 day period expired after the
14 Petition Date); 11 U.S.C. § 503(b)(9) (requiring that the goods have been received
15 by the debtor within 20 days before the Petition Date). If anything, these
16 assertions undermine – not bolster – Allrise's claim.

17 IV. CONCLUSION

18 WHEREFORE, the Trustee respectfully requests that the Court stay the
19 Abandonment Motion and the Administrative Claim until such time as Allrise
20 registers with the state of Washington as a foreign corporation, pays all back fees
21 and applicable penalties. In the alternative, the Trustee requests that the Court set
22 a discovery schedule to allow the Trustee to conduct its discovery regarding the

1 Abandonment Motion and the Administrative Claim or deny the Abandonment
2 Motion and the Administrative Claim in their entirety and with prejudice.

3 Dated: February 17, 2020 POTOMAC LAW GROUP
4

5 By: /s/ Pamela M. Egan
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